APPENDIX

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

STATE OF OHIO,
Plaintiff-Appellee

versus No. 8360

DeWITT EDDIE ROGERS,
Defendant-Appellant

DECISION

Rendered on October 25, 1966

MR. C. HOWARD JOHNSON
Prosecuting Attorney
MR. JOHN E. PECK
Assistant
Court House
Columbus, Ohio
For Plaintiff-Appellee

MR. JOHN J. WOLERY
895 South High Street
Columbus, Ohio
For Defendant-Appellant

DUFFEY, J.

This is an appeal from a conviction for armed robbery.

The first assignment relates to interrogation of appellant at the time and place of his arrest. This is no contention that the statements were involuntary. Since the case was tried in February, 1966, the new doctrines respecting interrogation do not apply. We find no error in admitting the evidence.

The second assignment relates to an allegedly illegal search and seizure. After appellant's arrest at Shopper's Fair, Inc., his automobile was removed to the police station, and then searched without a warrant. A search under those circumstances is questionable. However, in this case, a motion to suppress was presented after the impaneling of the jury. Since this was a second trial after a previous mistrial for a 'hung' jury, it is apparent that there was knowledge of the search before this trial began. The requirement of a pre-trial motion applies, and the objection was not seasonably made. See *State* v. *Davis* (1964) 1 Ohio St. 2d 28.

There has been some suggestion that the objection to the evidence had been made to the judge before the jury was impaneled. However, the record as filed in this court does not show any communication before impaneling.

We find the judgment is supported by sufficient evidence and is not against the manifest weight.

The judgment of the Common Pleas Court will be affirmed.

Judgment affirmed.

DUFFY, J. (Presiding), and TROOP, J., concur.

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

STATE OF OHIO,
Plaintiff-Appellee

versus No. 8360

DeWITT EDDIE ROGERS,
Defendant-Appellant

ENTRY

The Court, having considered the transcript, bill of exceptions, briefs of the parties and having heard oral arguments of Counsel, hereby finds the judgment of the trial court to be supported by sufficient evidence and affirms the same.

Exceptions to the defendant-appellant.

/s/ JOHN E. DUFFY
JUDGE

/s/ JOHN J. DUFFEY
JUDGE

/s/ HORACE W. TROOP
JUDGE

Approved:

/s/ C. HOWARD JOHNSON
Prosecuting Attorney, Franklin County

/s/ JOHN E. PECK
Assistant Prosecuting Attorney
Attorneys for Plaintiff-Appellee

/s/ JOHN J. WOLERY (per JEP)
John J. Wolery
Attorney for Defendant-Appellant

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO — 1967 Term
City of Columbus — To wit: May 17, 1967

APPEAL FROM THE COURT OF APPEALS
for Franklin County

THE STATE OF OHIO,
Plaintiff-Appellee

versus — No. 40732

DeWITT EDDIE ROGERS,
Defendant-Appellant

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____, 19____.

_____
CLERK

_____
DEPUTY

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO — 1967 Term

City of Columbus — To wit: June 21, 1967

THE STATE OF OHIO,

Plaintiff-Appellee

versus

No. 40732

DeWITT EDDIE ROGERS,

REHEARING

Defendant-Appellant

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No._____ Page_____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this _____ day of _____, 19___.

_____

CLERK

_____

DEPUTY

28 U.S. Code Section 1257 (3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows:

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

STATE OF OHIO,
Plaintiff
versus
DeWITT EDDIE ROGERS,
Defendant

No. 14713

MOTION

Now comes the Defendant, Dewitt Eddie Rogers, and moves the Court to suppress any and all evidence obtained in the search, without a warrant, of Defendant's automobile, by police officers in the within case.

WOLERY & ROTHGEB
/s/ JOHN J. WOLERY
JOHN J. WOLERY
Attorney for Defendant

MEMORANDUM

Two separate searches of Defendant's automobile were conducted at the time of Defendant's arrest. Defendant's automobile was then taken from his presence and towed to the Whitehall Police Station parking lot where it was again searched. All of the searches were made without a warrant. Evidence was seized which the prosecution intends to use in the within case. These searches and seizures were clearly illegal and a clear violation of this Defendant's constitutional rights.

Respectfully submitted,
WOLERY & ROTHGEB
/s/ JOHN J. WOLERY
Attorney for Defendant